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No. 85-1967

In the Supreme Court of the United States

OCTOBER TERM, 1985

HOLLINGSWORTH OIL COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioners contend that the court of appeals erred in reversing an order dismissing their indictment because of preindictment delay.

On September 20, 1984, petitioners were charged in three counts of an indictment returned in the United States District Court for the Middle District of Tennessee. The indictment charged them with two counts of making false statements in matters within the jurisdiction of the Department of Energy, in violation of 18 U.S.C. 1001, and one count of conspiracy to commit those offenses, in violation of 18 U.S.C. 371. Before trial, petitioners moved to dismiss the indictment on the basis of preindictment delay. On February 8, 1985, the district court dismissed the indictment on that ground (Pet. App. 5-12). On December 30,

1985, the court of appeals reversed (Pet. App. 1-5).[1] The court of appeals held that "an indictment should be dismissed for preindictment delay only if the delay caused substantial prejudice to the defendants' rights to a fair trial and the delay was an intentional device by the government to gain a tactical advantage over the defendants." *Id.* at 3. The court held that because the district court had found that the delay was not intentional, it had failed to apply the correct legal standard. The court of appeals also held that dismissal was not a proper remedy even if the district court's dismissal order independently rested on the destruction of documents of the Tennessee Energy Authority. *Id.* at 4-5.

Petitioners contend (Pet. 5-15) that the district court correctly found that they were denied due process because of the government's destruction of material evidence. They also contend (Pet. 15-22) that the district court properly found actual prejudice from the destruction of exculpatory documents and that that prejudice, coupled with the preindictment delay, warranted dismissal of the indictment. Whatever the merits of petitioners' contentions, they are not presently ripe for review by this Court.[2] The court of appeals' decision places petitioners in precisely the same position they would have occupied if the district court had denied their motion to dismiss. If petitioners are acquitted following a trial on the merits, their contentions will be moot. If, on the other hand, petitioners are convicted and their convictions are affirmed on appeal, they will then be able to present their contentions to this Court, together with

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[1]A petition for rehearing was denied on March 4, 1986. The petition for a writ of certiorari was not filed until May 30, 1986. It was therefore untimely under Rule 20.1 of the Rules of this Court.

[2]It is now more than 21 months since the return of the indictment and more than 16 months since the district court's dismissal order. Further interlocutory review at this time would cause additional delay in the final resolution of the charges against petitioners.

any other claims they may have, in a petition for a writ of certiorari seeking review of a final judgment against them. Accordingly, review of the court of appeals' decision would be premature at this time.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

JUNE 1986

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[3]Because this case is interlocutory, we are not responding on the merits to the question presented by the petition. We will file a response on the merits if the Court requests.